IN THE HIGH COURT OF DELHI

Bail Application No.1995/2007

Vinod Kumar Jha ..... Petitioner
! through: Mr.K.B.Sinha, Sr. Advocate with
Mr.Harinath Ram.

VERSUS

$ C.B.I. ..... Respondent
^ through: Ms.Mukta Gupta.

% DATE OF DECISION: 08.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

FIR No. RC 2A/2006
U/S. 120-B IPC read with
Sections 3 & 5 of Official Secrets Act
P.S. CBI ACU IX

1. Petitioner is one amongst the many persons accused in afore-noted case.

2. He seeks bail, inter alia, alleging that he has remained in judicial custody since 6.4.2006 and till date arguments on charge have not been advanced. It is stated by the petitioner that as per charge sheet filed, gravement of the allegations against the petitioner are as detailed in para 89 of the charge sheet. It is submitted that according to the prosecution, petitioner

has committed an offence under Section 5 of the Official Secrets Act, 1923. It is urged that the offence of which the petitioner is charged, if proved, entails a punishment of imprisonment upto a maximum period of 3 years with fine or with both.

3. In a nutshell, what is urged by the petitioner is that since half the maximum period of detention has already been undergone at the trial stage by the petitioner and there is no likelihood of the trial being completed in the near future, considering that he is charged of the offence under Section 5 of the Official Secrets Act, 1923, case is made out for release of the petitioner on bail.

4. Opposing the application for bail, learned counsel for the State points out that though the charge sheet alleges against the petitioner of having committed offence under Section 5 of the Official Secrets Act, 1923, the case stands registered and investigation proceeded even for the offence of conspiracy. Further, counsel submits that the computers entrusted to the petitioner were permitted by the petitioner to be unauthorisedly used by co-accused, Vijender Rana by taking the same to his, i.e. Vijender Rana's house. Thus, counsel submits that petitioner would also be guilty of an offence under Section 409 IPC.

5. It is pointed out that punishment under Section 409 IPC could extend to life imprisonment.

6. The rival versions have led this court to peruse the challan which has been presented. Indeed, in the entire challan I do not find any allegation against the petitioner that he acted in furtherance of a conspiracy. The gravement of the allegations against the petitioner are admittedly in para 89 of the charge sheet which has been filed. The same reads as under :-

> '89. That **Ex-Commander Vinod Kumar Jha (A-5)** s/o Shri Hardev Narain Jha r/o Raghopur New Colony, PO Bhikampur, Distt. Muzaffarpur, Bihar while working as Joint Director (Systems) and (Administration and Coordination) in Directorate of Naval Operations failed to take reasonable care of, and also so conducted himself as to endanger the safety of the sensitive information related to the Defence, available in the computer systems of the Directorate of Naval Operations. He used unauthorized non-official pen-drive on the official computer and unauthorizedly accessed internet in the secure DNO network thereby compromising with the security of sensitive information. He also provided an official computer to Vijender Rana (A-4) unauthorizedly for use at his home, which was used by Vijender Rana (A-4) for communication with Kulbhushan Parashar (A-1) and Ravi Shankaran (A-2) by way of e-mails and online chatting passing of the sensitive information copied from the computers of the Directorate of Naval Operations, thus committing **offences under Section 5 of the Official Secrets Act, 1923."**

7. A bare perusal of the case of the prosecution against the petitioner as disclosed to the court and for which prosecution intends to charge the petitioner, is of failure to take reasonable care as the Joint Director (Systems) and (Administration and Coordination) in Directorate of Naval Operations and by said conduct permitting non-official use of the pen drive on the official

computer enabling unauthorized access to the internet through the secure DNO network. The result was that the security of the State was endangered as sensitive information, not in public domain, was accessed.

8. The said act of the petitioner, if proved by the prosecution would attract penalty under Section 5 of the Official Secrets Act, 1923, prima facie, no more.

9. Pertaining to the offence under Section 409 IPC, suffice would it be to note that the same would also be a consequence of failure to take reasonable care and being lax in not realising the consequence of permitting Vijender Rana to take home for use a computer which was entrusted for use only in the office.

10. Under the circumstances, I am of the opinion that case is made out to to direct release of the petitioner on bail for the reason there is no possibility of the trial commencing in the near future, much less concluding.

11. I dispose of the petition directing that on the petitioner furnishing a personal bond in sum of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned Trial Judge, petitioner would be released on bail in afore-noted case. It would be a condition of the bail which is being granted to the petitioner that he would keep informed the Investigating Officer the residence in which petitioner would be residing. Further once

every 2 months, petitioner would report to the IO. The petitioner would not contact any witness of the prosecution, much less try to influence them. If petitioner has a passport, the same would be surrendered to the IO.

12. Needless to state, the learned Trial Judge would consider the matter as per law, uninfluenced by any observations in the present order, when arguments are heard on framing of charge. The facts noted here-in-above and the expression on the merits is restricted for purposes of considering the issue of grant of bail.

13. Dasti.

October 08, 2007 **PRADEEP NANDRAJOG, J.**
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